IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2205 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as JJJJ : NO

JJJJ

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Being aggrieved by the judgment and decree dated 6.12.1999 passed by the Civil Judge (S.D.) at Jamnagar in Special Civil Suit No. 157/89, the original defendant-Jamnagar Municipal Corporation has filed this appeal.

2. The facts giving rise to the present appeal, in a nutshell, are as under :-

3. The plaintiff and the defendant had entered into a contract on 23.7.1987 (Ex. 77) whereby the plaintiff had to convert certain public latrines into flush type latrines. The said contract was formerly given to Shri Kanjibhai, but, as the said person did not carry out the contract, the contract entered into by the original defendant-Jamnagar Municipal Corporation with the said person had been brought to an end and, therefore, the contract was given to the defendant. The said contract was to be completed as per the terms and conditions mentioned in the contract (Ex. 77) and the conditions incorporated in the tender notice.

4. As the defendant was not paid the amount of running Bills Nos. 32 and 33 and the amount payable to him with respect to some extra work done by him, under the contract, the plaintiff had filed the above referred suit. In the said suit, the security amount retained by the defendant Corporation was also claimed and as the defendant had not paid the amount payable to the plaintiff, by way of damages a sum of Rs. 20,000/- was also claimed. Before filing the suit, a notice had also been given by the plaintiff.

5. In pursuance of the notice issued by the court, written statement (Ex. 9) was filed by the defendant. It was contended in the written statement that the suit was barred by the law of limitation. Moreover, no notice was given by the plaintiff to the defendant and therefore the suit was not maintainable. It was also averred in the written statement that the defendant was not liable to pay any amount for the extra work done by the plaintiff because the Corporation had not given any sanction to the extra work done by the plaintiff.

6. After perusal of the pleadings, the trial court had framed issues at Ex.10. As per the said issues, the trial court had to decide whether the plaintiff was

entitled to recover a sum of Rs. 1,06,995.75 from the defendant along with interest at the rate of 1.5% per month. The trial court had also to decide whether the suit was maintainable and whether the trial court had jurisdiction to try the suit. It was also to be decided whether there was any contract for doing the extra work and whether the plaintiff was entitled to get any amount for the extra work done by him. After recording evidence and upon perusal of the record, the trial court came to the conclusion that the plaintiff was entitled to Rs. 1,06,995.75 with interest @ 12% p.a. The court also came to the conclusion that it had jurisdiction to try the suit and the suit was maintainable in view of the fact that the statutory notice had been served upon the defendant. The trial court also arrived at a finding that the plaintiff was entitled to the sum claimed for the extra work done by him.

7. Learned advocate Shri J.R. Nanavaty appearing for the defendant-appellant has submitted that the trial court has committed an error while arriving at the conclusions referred to hereinabove. It has been submitted by him that the plaintiff was not entitled to any amount for the extra work done by him for the reason that the defendant Corporation had not asked the plaintiff to do any extra work and no sanction was given by the defendant for doing the extra work. It has been submitted by him that even the amount with regard to the security deposit was not to be paid to the plaintiff as that amount was to be paid at the time of finalisation of the accounts.

8. We have heard learned advocate Shri Nanavaty at length and have also perused the record and proceedings pertaining to the case.

9. Upon perusal of the R & P and the relevant evidence adduced by the parties before the trial court, we are of the opinion that no error has been committed by the trial court by passing the decree in favour of the plaintiff. So far as the unpaid amount of running Bills Nos. 32 and 33 is concerned, it appears that the said amount was due and payable by the defendant to the plaintiff. The work covered under the said bills was done in pursuance of the contract and therefore it was not open to the defendant Corporation to withhold the said payment. There was no justification on the part of the defendant for not paying the said amount and therefore the trial court was absolutely justified in directing the defendant to make payment of the amount covered under running Bills Nos. 32 and 33.

10. So far as the amount, which was claimed by the plaintiff for the extra work done by him is concerned, we are of the view that the trial court was absolutely justified in awarding the said amount to the plaintiff. On behalf of the defendant Shri Valjibhai was examined (Ex. 119). Shri Valjibhai Raiyani was working as an Executive Engineer under the defendant. He has admitted in his examination-in-chief that there was a provision with regard to doing extra work in the tender. It has been admitted by him that the amount with regard to extra work was not paid because the Corporation had not given its sanction. It is pertinent to note that even in his cross-examination he has not said that there was no provision with regard to not doing any extra work. Thus, in his chief as well as in cross-examination, he has admitted the fact that the plaintiff had done some work, which is described as extra work, in pursuance of the conditions incorporated in the tender. It has been also admitted by him that the plaintiff was entitled to the said amount, but the said amount was not paid to the plaintiff because formal sanction was not given by the defendant Corporation for making the said payment. It has also been admitted by him that the said extra work was absolutely necessary and was done in pursuance of official instructions given to the plaintiff.

11. In view of the evidence adduced before the trial court by a responsible officer of the defendant, we cannot find any fault with the findings arrived at by the trial court. The plaintiff was entitled to the amount which was claimed by him for doing the extra work. In the circumstances, the trial court was absolutely justified in directing the defendant to pay a sum of Rs. 18,000/- for the extra work done by the plaintiff.

12. The trial court has also come to the conclusion that before filing the suit, the plaintiff had issued notice (Ex. 72) to the defendant. In the circumstances, the submission made by learned advocate Shri Nanavaty that the trial court had committed an error by entertaining the suit is not proper. The trial court had jurisdiction to entertain the suit and as notice had already been given by the plaintiff to the defendant before filing the suit, in our opinion, the trial court did not make any error while deciding the suit.

13. So far as the amount of security deposit is concerned, it is very clear that the security deposit was the amount which belonged to the plaintiff, but that amount was retained by the defendant so that if any

amount becomes payable by the plaintiff because of some damage caused to the defendant, the said amount can be adjusted. It was not the case of the defendant that any amount had become due and payable by the plaintiff to the defendant for any reason. In the circumstances, as the entire work had been done to the satisfaction of the defendant, the defendant had no right to retain the amount of security deposit. In our opinion, the trial court has rightly directed the defendant to make the payment of security deposit.

14. So far as the amount of interest and the damages are concerned, the trial court was absolutely justified in awarding the amount of interest and damages, because, for no justifiable reason, the defendant withheld the amount payable to the plaintiff. The plaintiff is a contractor and as his amount had been wrongly withheld and as he had been put to difficulties and was constrained to file a suit for claiming the amount, which was due and payable by the defendant, in our opinion, the trial court has not committed any error in awarding the amount of damages.

15. Looking to the evidence, which was adduced before the trial court, in our opinion, the trial court has not committed any error while deciding the suit in favour of the plaintiff. We therefore dismiss the appeal.

16. The appeal is disposed of as dismissed. The R&P should be returned to the trial court.

(A.R. Dave, J.)

(J.R. Vora, J.)

(hn)